

H-3120-1 - COMPETITIVE LEASES

KeywordsIII. Special Competitive Leasing SituationsA. Future Interest Competitive Leasing

In the process of identification and selection of lands for a future interest competitive lease sale, check for any existing private lease on lands that will vest to the United States that predates the date the United States will acquire the minerals. Prior to posting such lands for competitive sale, examine the existing private lease and consult with the Regional Solicitor, if necessary, to determine whether the private lease continues in force.

FUTURE
INTEREST
LEASING

In certain unusual cases, the private lessee may have a right, even if the lands are not producing, to the continuation of the existing lease, depending on the terms and conditions of the private lease. If the existing private lease must continue, issue a new lease to such party without competitive bidding using the same terms as in the existing private lease. If a new lease is issued, a BLM serial number is assigned to the lease and notations are to be made on the records (oil and gas plat or other appropriate status records and the HI).

CONTINUATION
OF PRIVATE
LEASE

If the Federal future interest mineral estate underlies acquired Federal surface, e.g., the Forest Service, consent to lease must be obtained from the SMA with verification of the private lease and minerals ownership requested.

Illustration 27 shows typical conditions/requirements for future interest leasing that must be in the sale notice and the lease as issued by the BLM authorized officer.

ADDITIONAL
CONDITIONS/
REQUIREMENTS

If the high bidder joins a unit agreement, the effective date is the date the minerals vest in the United States (not an earlier date of joinder). If the high bidder for the future interest competitive parcel is unable to obtain joinder from the unit operator after an extended period of time, request the bidder/lessee to provide the reasons for failure to join the unit. The authorized officer responsible for review and approval of unit actions, based on the information submitted by the bidder/lessee, shall determine whether the lease can be operated independently of the unit. If so, the future interest lease is to be issued without unit joinder. Where the terms of the private unit agreement are in conflict with Federal regulations, the Federal regulations shall prevail.

UNIT JOINDER
REQUIREMENTS

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Keywords

NOTE: Lease Form 3100-11b is used to issue a future interest competitive lease to the successful bidder. Check appropriate box, normally "Acquired Lands," but on rare occasion, "Public Domain Lands," and show the percentage of United States interest under Item 2 on the form. Complete Item 3 on the form from the worksheet. At bottom of lease form, check the box "Competitive lease (ten years)," and check "Other," entering "Future Interest Lease." The effective date of the future interest lease is the date the mineral interests vest in the U.S.

COMPLETION OF
LEASE FORM
3100-11b

Where the United States owns both a present fractional interest and a future fractional interest of the minerals in the same tract, when a lease is issued, it shall cover both the present and future interest in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. A lease for the future fractional interest, when such interest vests to the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

PRESENT AND
FUTURE
FRACTIONAL
INTEREST

Complete the accounting advice, indicating the lease anniversary date as the date the minerals vest in the U.S. Indicate the expiration date as 10 years later. For example, if the vesting date of the future lease is April 21, 1995, the expiration date is April 20, 2005. The MMS automated system now accepts a first-year rental payment for a future interest lease prior to the vesting date of the lease. Forward the accounting advice to the MMS-DMD upon issuance of a future interest lease including the first year's rental, if paid, with the bonus bid payment, annotating the vesting date in the "Remarks" area on the accounting advice (see Illustration 28).

ACCOUNTING
ADVICE -
FUTURE
INTEREST
LEASE IN
MMS-DMD

NOTE: Rental and royalty for future interest leases are not due until the minerals vest in the U.S. Therefore, the bidder cannot be penalized if the first year's advance rental is not paid on the day of the sale. However, if the first year's rental is paid early, indicate in the "Remarks" area on the accounting advice that the rental is to be applied, to avoid the MMS-DMD from issuing a courtesy billing notice for the first year's rental.

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When a future interest lease is issued, update ALMRS Entry using Case Type 312023 (Public Domain) or Case Type 312024 (Acquired) and the DE 1775/2910 action codes identified in Section II, and the following:

AUTOMATED
NOTATION

Enter Action Date (MANDATORY ACTION CODE): Enter date the minerals will vest in the U.S.; DE 1775 Action Code 587/DE 2910 Action Code 884; Action Remarks: Fractional percent of U.S. ownership (when applicable).

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B. Sale of Underlying InterestsKeywords

Underlying interests in a cancelled or forfeited lease, i.e., interests in less than the whole lease, are to be competitively offered under the guidelines for competitive leasing provided in Section II.C. In the Notice of Competitive Lease Sale, a reference must appear after the parcel land description showing the exact interest being offered, i.e., percentage of undivided record title interest only, percentage of overriding royalty only, etc. (see Illustration 29).

SALE OF
UNDERLYING
INTERESTS

A specific reference in the Notice of Competitive Lease Sale also must indicate that if the parcel fails to receive a bonus bid at the oral auction, the underlying interest in the lands will be available for lease beginning the first day following the end of the oral auction to the first qualified person or entity submitting a bonus bid of \$75 for the entire underlying interest plus the first year's advance rental. A \$75 filing fee would not be required.

The provisions for sale of such cancelled or forfeited underlying lease interests are not affected by the Federal Onshore Oil and Gas Leasing Reform Act, but are contained in Section 27 of the Mineral Leasing Act (30 U.S.C. 184(h)(2)). Therefore, the submittal of a sealed bonus bid of a predetermined amount is allowable. The bid made for such underlying lease interests would not require the submission of a \$75 administrative fee, since it is not a noncompetitive lease offer.

Lease Form 3100-11b is to be used to issue the lease, and is completed the same as a regular competitive lease, with the land description indicating the specific underlying lease interests as described in the sale notice. All stipulations for the lands must be included in the lease as noted in the sale notice (or added, deleted, or revised after official posting of the sale notice).

COMPLETION OF
LEASE FORM
3100-11b

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C. Leasing Lands Within Gas Storage Agreements

Leases may be issued for lands containing a gas storage agreement. However, the specific formations covered by the storage agreement must be ~~excluded~~ from the lands offered in the parcel. The Notice of Competitive Lease Sale shall describe those lands within the parcel that are excluded due to the storage agreement.

The parcel land description in the sale notice and on the lease form 3100-11b must specifically exclude the formations contained in the storage agreement (see Illustration 30).

Keywords

GAS STORAGE
AGREEMENTS

COMPLETION OF
LEASE FORM
3100-11b

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D. Leasing Lands Within National Wildlife Refuge
System or Coordination LandsKeywords

Currently, by Secretarial policy, lands within wildlife refuges and coordination lands, except in Alaska, may not be leased unless the lands are being drained (see Section III.F, below, Manual Section 3101, and Handbook 3101-1). See 43 CFR 3100.2 and Handbook 3100-1, Chapter 2 for drainage provisions.)

WILDLIFE
REFUGE OR
COORDINATION
LANDS

A report from Mineral Resources or Field Office operations personnel that the lands are being drained is to be provided.

DRAINAGE
REPORT

Upon receipt of Fish and Wildlife Service (FWS) consent to lease, the lands must be offered competitively.

FWS CONSENT

Procedures for offering the lands are the same as the competitive sale guidelines described in this Handbook.

Lease form 3100-11b is used, and is to be completed the same as a regular competitive lease, with the appropriate leasing authority (Attorney General's Opinion of April 2, 1941, 40 Op. Atty. Gen. 41, as applicable). Stipulations for the protection of the refuge shall also be included, and must be fully stated in the Notice of Competitive Lease Sale.

COMPLETION OF
LEASE FORM
3100-11b

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E. Leasing Lands Reported as Surplus by General Services AdministrationKeywords

Upon receipt of a delegation of authority from the General Services Administration (GSA) to lease lands reported by GSA as excess or surplus, request a report from Mineral Resources or Field Office operations personnel for all of the required stipulations to be attached to any lease issued.

GSA SURPLUS
LANDS

The Notice of Competitive Lease Sale must contain the authority for leasing, i.e., "Oil and gas leasing authority for the lands described in this parcel is delegated to the Secretary of the Interior by the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484, 486(d))" (see Illustration 31).

The GSA surplus lands are available by competitive bid only. If no bids are received, the lands are not available for noncompetitive lease offers.

COMPETITIVE
BID ONLY

The ALMRS Case Type for such leases is 312013. The data entry procedures are the same as those addressed in this Handbook.

AUTOMATED
NOTATION

Lease Form 3100-11b is to be used. At the top of the form, add the additional leasing authority "Federal Property and Administrative Services Act of 1949, as amended" after the words "or the" at the end of the second line.

COMPLETION OF
LEASE FORM
3100-11b

The accounting advice must identify the lease as being located on GSA surplus lands in order to assist the MMS in preparing the annual report to the GSA on the proceeds received from mineral leases on such surplus lands (see Illustration 32).

ACCOUNTING
ADVICE WITH
REMARKS
NOTATION

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F. Protective LeasingKeywords

When lands not subject to leasing are affected by drainage of oil and gas by wells on adjacent lands, the lands may be offered for lease in accordance with the provisions of the Attorney General's Opinion of April 2, 1941, with the consent of the agency having jurisdiction over the lands. Lands not subject to leasing under the mineral leasing laws include units of the National Park System as identified in 43 CFR 3100.0-3(a)(2)(i) and (b)(2)(i). In the case of National Park System lands, the BLM State Office shall first contact the appropriate National Park Service Regional Office to address possible nonleasing options, such as compensatory royalty agreements (see Section IV), that may be available as well as leasing options.

PROTECTIVE
LEASING

By current Department of the Interior (DOI) policy, National Wildlife Refuge System lands, including coordination lands, outside of Alaska are not available for leasing, except in cases of drainage. This policy is derived from Section 107 of the 1984 Continuing Appropriations Act of November 14, 1983, which specified that no funds can be used to process or grant oil and gas lease applications or offers on any Federal lands outside Alaska that are in units of the National Wildlife Refuge System, except in cases of drainage, until the Secretary of the Interior issues new regulations or prepares an environmental impact statement. The Department of the Interior has no plans to make National Wildlife Refuge System lands outside Alaska available for leasing under the provisions of this 1983 law. (See Manual Section 3101.5.)

NATIONAL
WILDLIFE
REFUGE LANDS,
INCLUDING
COORDINATION
LANDS, NOT
AVAILABLE FOR
LEASING
OUTSIDE ALASKA
EXCEPT IN
DRAINAGE
SITUATIONS

For lands outside the DOI, the authority to lease in cases of drainage may be transferred to DOI. This is accomplished by public land order, the terms of which are to be developed between DOI and the agency involved. For lands administered by DOI agencies, no formal order of transfer of authority to lease is necessary, but no leasing may occur without the consent of that agency including required stipulations for incorporation into the lease to protect the lands for the purpose for which they were set apart or acquired (see Illustration 33).

CONSENT
REQUIRED

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Keywords

To prepare and offer drainage parcels, follow the same competitive leasing procedures as described in this Handbook for a regular competitive parcel offering. The Notice of Competitive Lease Sale must show the authority for leasing (see Illustration 34).

Parcels offered under protective leasing provisions are available by competitive bid only. Either a sealed bid or oral bid method is acceptable. However, if no bids are received, the lands are not available for noncompetitive lease offers.

COMPETITIVE
BID ONLY

Lease Form 3100-11b is to be used. Complete the same as for a regular competitive lease, except at the top of the form the leasing authority "Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41)" is to be added, as appropriate, after the words "or the" at the end of the second line.

COMPLETION OF
LEASE FORM
3100-11b

The ALMRS Case Type for such leases is 312014. The data entry procedures are the same as those addressed in this Handbook.

AUTOMATED
NOTATION

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G. Unleased Lands Within Blocks of Leased Lands
Preventing Logical Exploration and Development

Keywords

When unleased Federal lands are not available for leasing and, due to proximity or commingling with leased lands, prevent a lessee's ability to form blocks of land that are logical for the efficient and orderly exploration and development of the oil and gas resources, the existing Federal leases may be suspended under the provisions of Section 39 of the Mineral Leasing Act. (See Manual Section 3103 and Handbook 3103-1.)

SUSPENSION OF
LEASES DUE
TO LEASING
DELAYS

When an entity has indicated the inability to assemble the necessary blocks of land to pursue a drilling program due to the best prospects being located on lands currently unavailable for leasing, the unleased lands within the proposed designated area are to be identified by Adjudication as a confidential expression of interest. Establish a confidential work file for the unleased parcels for each such industry-designated area, indicating BLM as the applicant. The unleased Federal lands within each logical block of land are to be parcelled into tracts that must be offered at the same competitive sale, not split between several competitive lease sales. Attach a special sheet on the front of each such work file (including all requests sent to the SMA) indicating that the information contained in the file is to be handled in a confidential manner (including all correspondence concerning the unleased land within the designated area, and that all of the unleased lands within the area are to be offered at the same competitive lease sale.

PARCEL LANDS
IN DESIGNATED
DEVELOPMENT
AREAS FOR LEASE
OFFER AT THE
SAME LEASE SALE

Maintain the confidential work files for a 1-year period from the date of the competitive sale at which the lands were offered, since the suspension of the existing leases is to remain in effect for a year after the effective date of the newly-issued leases or until approval of an Application for Permit to Drill, whichever occurs first, within the logical area subject to exploration and development by the entity.